IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2018

Pronounced on : 28.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.D.AUDIKESAVALU

W.P. Nos. 16539, 18153, 18184 and 33580 of 2002
and
W.P. No. 24020 of 2003
and
W.P. M.P. Nos. 29592 and 29593 of 2003

W.P. No. 16359 of 2002

United NTC Staff Union rep. By its
General Secretary,
Registration No. 684/CBE,
No. 6-A, Race Course,
Coimabtore 641 018. ... Petitioner

-vs-

1. Union of India
   Rep. by its Secretary,
   Ministry of Textiles,
   Udhyog Bhavan, New Delhi.

2. National Textile Corporation Ltd.,

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Rep. by its Chairman and Managing Director,
Core 4 Scope Complex,
7, Lodi Road, New Delhi – 3.

3. National Textile Corporation,
(TN & P) Ltd., Rep. by its
Chairman and Managing Director,
No. 35-b, Somasundaram Mill Road,
Coimbatore - 641 009.

4. Somasundara Mills,
Rep. by its General Manager,
Coimbatore. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that clause 3.1.6 of the Modified Voluntary Retirement Scheme (MVRS) introduced with effect from 01.01.2002 extended to the Fourth Respondent mills in so far as it reckons a month as 30 days for the purpose of calculating ex-gratia as illegal, arbitrary, contrary to Section 9-A of the Industrial Disputes Act, 1947, and consequently direct the Respondents to settle the ex-gratia amount payable to the members of the Petitioner union who are working in the Fourth Respondent mill and who are opting for Voluntary Retirement under the Modified Voluntary Retirement Scheme (MVRS) by reckoning a month as 26 days wages as given in the earlier VRS Scheme.

W.P. No. 18153 of 2002

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National Textile Workers Union,
(Reg. No. 1454)
No. 1848, Trichy Road,
Ramanathapuram,
Coimbatore 641 045,
Rep. by its Secretary. ... Petitioner

-vs-

1. Somasundaram Mills,
   (A Unit of National Textile Corporation)
   (Tamilnadu and Pondicherry) Ltd.,
   35-B, Somasundaram Mills Road,
   Coimbatore 641 009.
2. The Chairman-cum-Managing Director,
   National Textile Corporation,
   (Tamilnadu and Pondicherry) Limited,
   Somasundaram Towers,
   Somasundaram Mills Road,
   Coimbatore 641 009.
3. The Chairman,
   National Textile Corporation Limited,
   Core 4, Scope Complex,
   No. 7, Lodhi Road,
   New Delhi 110 003. ... Respondents

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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent relating to MVRS dated 02.05.2002 and quash the same in so far it directs calculation of 30 days for arriving one day wages under the said MVRS and consequently direct the Respondents to implement the MVRS by applying 26 days for arriving one day wages.

W.P. No. 18154 of 2002

1. Kovai Mavatta Mill Thozhilalar Sangam (CITU),
   Registration No. 78,
   Represented by its President,
   381, Annupar Palayam, Coimbatore – 641 009.
2. Coimbatore Dist. Mill Worker's Union (AITUC),
   Registration No. 84,
   Represented by its Secretary,
   99, R.K. Street, Kattor, Coimbatore – 9. ... Petitioners

-vs-

1. Union of India
   Rep. by its Secretary,
   Ministry of Textiles,
   Udhyog Bhavan, New Delhi.

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2. National Textile Corporation Ltd.,
   Rep. by its Chairman and Managing Director,
   Core 4 Scope Complex,
   7, Lodi Road, New Delhi - 3.
3. National Textile Corporation,
   (TN & P) Ltd., Rep. by its
   Chairman and Managing Director,
   No. 35-b, Somasundaram Mill Road,
   Coimbatore - 641 009.
4. Somasundaram Mills,
   Rep. by its General Manager,
   Coimbatore. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the clause 3.1.6. of the Modified Voluntary Retirement Scheme (MVRS) dated 23.01.2002 introduced with effect from 01.02.2002 extended to the Fourth Respondent mills w.e.f. 02.05.2002 in so far as it reckons a month as 30 days for the purpose of calculating ex-gratia as illegal, arbitrary, contrary to Section 9-A of the Industrial Disputes Act, 1947, violative of Articles 14 and 21 of the Constitution of India and consequently direct the Respondents to settle the ex-gratia amount payable to the members of the Petitioner unions who are working in the Fourth Respondent mill and who are opting for Voluntary Retirement under the Modified Voluntary Retirement Scheme (MVRS) by reckoning a month as 26 days wages as given in the earlier VRS Scheme dated 31.08.2001 issued to the employees of Kaleeswarar Mills A Unit, a Unit of Third Respondent.

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W.P. No. 33580 of 2002

1. Textile Worker's Union [CITU],
   Rep. By its Secretary, Regn. No. 190/TIN,
   Sengottah – 627 809.
2. Balaramaverma National Workers Union [INTUC],
   Rep. by its Secretary, Regn. No. 207/TIN,
   B.V.T. Mills, Sengottah – 627 809.
3. Dr. Ambedkar Desia Panchallai
   Thozhilalar Sangam, Rep. by its President,
   Regn. No. 657/CBE,
   B.V.T. Mill Branch, Sengottah – 627 809.
4. Jilla Panchallai Thozhilalar Sangam [AITUC],
   Rep. by its Secretary, Regn. No. 2636/TIN,
   B.V.T. Mill Branch, Sengottah – 627 809.
5. Nellai Mavatta Dravida Panchallai Thozhilalar
   Sangam [LPF] rep. by its President, Regn. No. 3118/TIN,
   B.V.T. Mill Branch, Sengottah – 627 809. ... Petitioners

-vs-

1. Union of India
   Rep. by its Secretary,
   Ministry of Textiles,
   Udhyog Bhavan, New Delhi.
2. National Textile Corporation Ltd.,
   Rep. by its Chairman and Managing Director,
   Core 4 Scope Complex,
   7, Lodi Road, New Delhi - 3.

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3. National Textile Corporation,
   (TN & P) Ltd., Rep. by its
   Chairman and Managing Director,
   No. 35-b, Somasundaram Mill Road,
   Coimbatore - 641 009.
4. Balaramaverma Textile Mills,
   Rep. by its General Manager,
   Sengottah.
5. Somasundara Mills,
   Rep. by its General Manager,
   Coimbatore. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the clause 3.1.6. of the Modified Voluntary Retirement Scheme (MVRS) dated 23.01.2002 introduced with effect from 01.02.2002 extended to the Fourth Respondent mills vide the circular bearing reference NIL dated 07.08.2002 issued by the Fourth Respondent mills in so far as it reckons a month as 30 days for the purpose of calculating ex-gratia as illegal, arbitrary, contrary to Section 9-A of the Industrial Disputes Act, 1947, violative of Articles 14 and 21 of the Constitution of India and consequently direct the Fourth Respondent to settle the ex-gratia amount payable to the members of the Petitioner unions who are working in the Fourth Respondent mill and who are opting for Voluntary Retirement under MVRS by reckoning a month as 26 days wages as given in the earlier VRS Scheme dated 31.08.2001 issued to the employees of Kaleeswarar Mills A Unit, a Unit of Third Respondent.

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W.P. No. 24020 of 2003

Kovai Erode Mavatta LPF
Dravida Panchalai Thozhilalar
Matrum Sangam, Reg. No. 1102/Kovai
Rep. by its General Secretary,
No. 1, Palanivelayudham Pillai Road,
(Devar Bungalow) Ramanathapuram,
Coimbatore - 641 045. ... Petitioner

-vs-

1. Union of India
   Rep. by its Secretary,
   Ministry of Textiles,
   Udhyog Bhavan, New Delhi.
2. National Textile Corporation Ltd.,
   Rep. by its Chairman and Managing Director,
   Core 4 Scope Complex,
   7, Lodi Road, New Delhi - 3.
3. National Textile Corporation,
   (TN & P) Ltd., Rep. by its
   Chairman and Managing Director,
   No. 35-b, Somasundaram Mill Road,
   Coimbatore - 641 009.
4. Balaramavarma Textiles Mills,
   Rep. by its General Manager,
   Sengottai - 627 809,
   Tirunelveli District.

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5. Somasundaram Mills,
   Rep. by its General Manager,
   Coimbatore. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to settle the ex-gratia amount payable to the members of the Petitioner sangam working in the respondent mills and who are opting for Voluntary Retirement, by reckoning one month as 26 days as given in the earlier Voluntary Retirement Scheme dated 31.08.2001.

For Petitioner : M/s. A.V. Bharathi in W.P. 24020 of 2003
M/s. K.M. Ramesh in W.P. 18184 of 2002
M/s. A. Sivaji in W.P. 18153 of 2002
M/s. Balan Haridas in W.P. 16539 of 2002
M/s. K.M. Ramesh in W.P. 16539 of 2002

For Respondents : Mr. J. Madanagopal Rao
(Central Government Standing Counsel)
for R1 in W.P. 24020 of 2003
M/s. S. Meenakumari
(Central Government Standing Counsel)
for R1 in W.P. 33580, 18184 and 16539 of 2002
Mr. R. Parthiban for R2 and R3
in W.P. 24020 of 2003 and
W.P. 18153, 33580, 18184 and 16539 of 2002

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C O M M O N O R D E R

The Petitioners are trade unions, some of whose members at the time of filing of these Writ Petitions were employees of Balaramavarma Textiles Mills, Sengottai, and Somasundram Textile Mills, Coimbatore, which are 'sick textile undertakings' declared in terms of Section 2(j) of the Sick Textile Undertakings (Nationalisation) Act, 1974, and have been shown in item Nos. 13 and 93 of the First Schedule of that Act. The National Textile Corporation, which has been administering the aforesaid mills under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974, had introduced a Modified Voluntary Retirement Scheme (hereinafter referred to as 'MVRS' for short), for the employees of those mills. Clauses 3.1.1. and 3.1.6. of MVRS, which is the subject matter of the contentious issues in these Writ Petitions, read as follows:-

> "3.1.1. Ex-gratia payment equivalent to 35 days for every completed year of service and 25 days for the balance of service left until superannuation. The compensation will be subject to a minimum of Rs.25,000/- or 250 days salary whichever is higher. However, this compensation shall not exceed the sum of the salary that the employee would draw at the prevailing level for the balance of the period left before superannuation.

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3.1.6 For the purpose of reckoning a month while calculating ex-gratia amount, it shall be reckoned as 30 days in a month. Further, compensation for proportionate month is also to be taken into account for calculation of the ex-gratia."

The grievances espoused by the Petitioners on behalf of its aforesaid members is that the number of days reckoned in a month is 30 days for the purpose of calculating ex-gratia payment instead of 26 days as per the practice followed in the industry as held in the decision of this Court in ***Management of Shadlow India Limited, Madras -vs- Presiding Officer, Principal Labour Court, Madras*** [(2001) LNN 418]. It is now urged by the Learned Counsel appearing for the Petitioners that the concerned employees have received ex-gratia compensation calculated in terms of MVRS and have been relieved from service without prejudice to the right of the Petitioners to prosecute these Writ Petitions claiming the differential amount that would be payable if 26 days is taken as a month for the purpose, as mentioned earlier.

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2. Learned Counsel appearing for the National Textile Corporation, which had formulated MVRS, vehemently contends that the employees who had opted for MVRS and have accepted its benefits could not be permitted to resile

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therefrom on the principle that one could not approbate and reprobate, relying on the decisions of the Hon'ble Supreme Court of India in ***Punjab National Bank -vs- Virendra Kumar Goel*** [(2004) 1 LLJ 217] and ***Bank of India -vs- O.P. Swarnakar*** [(2003) 2 SCC 721]

3. The primordial question that arises for consideration is that whether it is permissible in law for the concerned employees to claim any benefit in excess of what has been extended under a Voluntary Retirement Scheme floated by the employer? In this regard, it would suffice to refer to the authoritative pronouncement of the Hon'ble Supreme Court of India in ***National Insurance Special Voluntary Retired/Retired Employees Association -vs- United India Insurance Co. Ltd.,*** (Judgment dated 26.10.2018 in Civil Appeal No. 10775 of 2018), wherein after referring to earlier decisions relating to the subject, it has been held in para 20 as follows:-

> "We have, thus, no hesitation in coming to the conclusion that statutory or contractual, such voluntary retirement schemes as the SVRS - 2004 Scheme have to be strictly adhered to, and the very objective of having such Schemes would be defeated, if parts of other Schemes are sought to be imported into such voluntary retirement schemes. What is offered by the employer is

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a package as contained in the Schemes of voluntary retirement, and that alone would be admissible."

Following that binding decision, it is not possible to entertain the claim made by the Petitioners on behalf of its members for granting additional benefits apart from what has been offered under MVRS.

4. Be that as it may, even otherwise, the contentions made by the Petitioners cannot be countenanced inasmuch as MVRS, being optional, it was not obligatory for the concerned employees to accept the same and they were free to continue in employment and receive the eligible amount of wages till the eventual closure of the mills and get transferred to other mills administered by the National Textile Corporation. Even if it is assumed that they could not be accommodated in other mills, their only right thereafter would be to seek retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947.

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5. In that backdrop, Learned Counsel appearing for the Petitioners strenuously emphasize that the concerned employees were virtually under economic duress to accept the benefits offered under MVRS and in those circumstances, it would be inequitable to deprive them of their right to agitate for the benefits that they are legitimately entitled to receive from their

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employer. In this context, if a comparative assessment is made of the benefits that the concerned employees would receive as retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947, viz-a-viz, ex-gratia payment under MVRS, the following position would emerge by conversion of fraction into decimal form in calculating the amount:-

Retrenchment Compensation for completed years of service	15/26 = 0.577
Compensation under MVRS for completed years of service	35/30 = 1.167
Balance service left until superannuation under MVRS	25/30 = 0.833

It could thus be seen that the ex-gratia amount paid under MVRS at the value of 1.167 and 0.833 times of the monthly wages for each year is apparently higher than the retrenchment compensation at the value of 0.577 times of the monthly wages for each year that would be payable under Section 25-F of the Industrial Disputes Act, 1947. It may also be pointed out that if a month is reckoned as 26 days as wanted by the Petitioners, but the ex-gratia payment had been reduced to $30^{1}/_{3}$ days for every completed year of service and $21^{2}/_{3}$ days for the balance years of service left until superannuation (for which there cannot be any pre-existing right), instead of 35 and 25 days respectively, the final amount of compensation would still have been the same and there would be no scope for even raising the present claim. Viewed from this perspective, the concerned employees cannot complain of any prejudice caused to them by not reckoning a month as 26 days for the purpose of MVRS.

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6. This would lead to the irresistible conclusion that the challenges on the ground of violations of Articles 14 and 300-A of the Constitution of India, 1950, made by the Petitioners are illusory and fallacious and the various decisions cited on their behalf in support thereof, cannot have any application to the fact situation in these cases.

7. Moreover, inasmuch as the Hon'ble Supreme Court of India in ***L. Robert D'Souza -vs- Executive Engineer, Southern Railway*** [(1982) 1 SCC 645] has held that retrenchment under Section 25-F of the Industrial Disputes Act, 1947, would not fall under any of the items mentioned in the Fourth Schedule of that Act for which a notice of change is mandated under Section 9-A of that Act, the said provisions cannot be applicable to ex-gratia payment under MVRS as well.

8. The last submission made by the Learned Counsel for the Petitioners is that in respect of other mills such as, Kaleeswarar Mills in which Voluntary Retirement Schemes were earlier introduced by the National Textile Corporation, the number of days in a month had been reckoned as 26 days for computing ex-gratia payment and the failure to extend the same benefit in the case of the employees of the Balaramavarma Textile Mills, Sengottai, and

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Somasundaram Textile Mills, Coimbatore, is discriminatory. It is needless here to recapitulate the settled law that it is prerogative of the employer to frame the basis for calculating the ex-gratia payment amount taking into consideration the financial capacity of concerned mill and there cannot be any uniformity in prescribing the same criteria for all such mills.

9. Therefore, as there are no merits in these Writ Petitions, the same are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

28.11.2018

vjt

Index :Yes/No
Internet:Yes/No
Speaking/Non-speaking order

To

1. Secretary,
   Union of India,
   Ministry of Textiles,
   Udhyog Bhavan, New Delhi.

2. Chairman and Managing Director,
   National Textile Corporation Ltd.,
   Core 4 Scope Complex,
   7, Lodi Road, New Delhi - 3.

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3. Chairman and Managing Director,
   National Textile Corporation (TN & P) Ltd.,
   No. 35-B, Somasundaram Mill Road,
   Coimbatore - 641 009.

4. General Manager,
   Balaramavarma Textiles Mills,
   Sengottai - 627 809,
   Tirunelveli District.

5. General Manager,
   Somasundaram Mills,
   Coimbatore.

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P.D. AUDIKESAVALU, J.

vjt

W.P. Nos. 16539, 18153, 18184 and 33580 of 2002
and
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